

TEXAS HAZARDOUS WASTE FACILITY SITING PROVISIONS

Topics

Administration

Local Community Needs and Involvement

Public Participation

Siting Restrictions and Prohibitions

Environmental Justice Considerations

Economic Criteria

Other Criteria

Relevant Statutes and Regulations:

- G The Texas Solid Waste Disposal Act, Texas Health and Safety Code (THSC), as amended, Chapter 361
 - G Texas Natural Resource Conservation Commission, Procedural Rules, codified in Texas Administrative Code (TAC), Title 30, as amended Chapter 39 (30TAC 39), "Request for Contested Case Hearings" and Chapter 39, "Public Notice"
 - G Texas Natural Resource Conservation Commission, Procedural Rule, Codified in Title 30, Texas Administrative Code, Chapter 50 (30 TAC 50), "Action on Applications", as amended
 - G Texas Administrative Code (TAC), Title 30, Environmental Quality, 1994, as amended, Chapter 116 (30 TAC 116), "Control of Air Pollution by Permits for New Construction or Modification"
 - G Texas Administrative Code (TAC), Title 30, Environmental Quality, 1994, as amended, Chapter 335 (30 TAC 335), "Industrial Solid Waste and Municipal Hazardous Waste"
 - G Texas Natural Resource Conservation Commission, Texas Water Code, as amended, Chapter 5
- <http://www.state.tx.us/Government/> lists Texas Laws

Other Relevant Documents

- G Resource Conservation and Recovery Act (RCRA) as codified in 40CFR

Texas Hazardous Waste Facility Siting Provisions

Web address for the State Environmental Agency

G <http://www.tnrcc.state.tx.us/>

Affected Facilities:

- G New hazardous waste management facilities, filed on or after September 1, 1984.
- G Areal expansions of existing hazardous waste management facilities, filed on or after September 1, 1984.
- G New commercial hazardous waste facilities.

Definitions (from 30 TAC 335.202):

- G **Existing hazardous waste management facility** - any facility used for the storage, processing, or disposal of hazardous waste and which is authorized by a hazardous waste permit. Facilities identified in the following pending applications will also be considered existing hazardous waste management facilities pending final action on the application by the commission:
 - a. an application submitted pursuant to 335.2(c), 335.43(b) and 335.45(b), including any revisions made in accordance with 305.51; or
 - b. an application filed pursuant to 335.2(a) which has been submitted in accordance with Chapter 305 and which has been declared to be administratively complete pursuant to 281.3 prior to September 1, 1984.
- G **New hazardous waste management facility** - any facility to be used for the storage, processing, or disposal of hazardous waste and which is not an existing hazardous waste management facility.
- G **Commercial hazardous waste management facility** - any HWM facility that accepts hazardous waste or PCBs for a charge, except a captured facility or a facility that accepts waste only from other facilities owned or effectively controlled by the same person, where "captured facility" means a manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex. (335.202)

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Topic	Stage ¹	State citation ²	Provision
ADMINISTRATION			
STATE ADMINISTERING AGENCY			
The Texas Natural Resource Conservation Commission (TNRCC)		<i>[361.011]</i> <i>[361.017]</i> <i>[361.018]</i>	The Texas Natural Resource Conservation Commission (TNRCC or the Commission) has the sole responsibility for the administration of laws and regulations concerning hazardous waste. TNRCC assumed powers, duties, etc. of the Texas Water Commission and the Texas Air Control Board effective September 1, 1993.
Appointment and Structure of the TNRCC		[5.052] [5.056] [5.058]	Three full-time commissioners are appointed for 6-year terms by the governor , with the advice and consent of the Texas Senate, to perform the legislative and judicial functions of the TNRCC; the governor also appoints the chairman of the Commission. The terms of the commissioners are staggered so that every 2 years one member's term expires, and a commissioner may not serve more than two 6-year terms.
INDEPENDENT SITING BOARD			
No provisions found			

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LOCAL COMMUNITY NEEDS AND INVOLVEMENT			
LOCAL REVIEW/INVOLVEMENT			
TNRCC recommends a pre-application review process where opposition is likely	PPA	335.391(a)&(b) <i>[361.063)(a)&(l)(1)]</i>	<p>! In situations where opposition to an application is likely to exist, TNRCC recommends applicants to enter into agreements with affected persons, through a local review committee process, to resolve issues of local concern prior to the submission of a permit application for a new HWM facility (including injection wells used for the disposal of hazardous waste).</p> <p>! This provision does not apply to hazardous waste facilities for which an application has been filed, or which was authorized to operate, as of September 1, 1985.</p>
Informal discussions and notification prior to formal notification	PPA	335.391(c)(1)	<p>Potential applicant begins informal discussions with TNRCC and may also inform the following persons:</p> <p>(A) appropriate mayor and county judge if the facility is to be located within the corporate limits or extraterritorial jurisdiction of a city; or</p> <p>(B) appropriate county judge if facility is to be located within an unincorporated area of a county; and</p> <p>(C) the appropriate regional council of government.</p>
Notice of Intent to File a permit application filed with TNRCC; Receipt of Notice initiates the pre-application process	PPA	335.391(c)(1)&(2) <i>[361.063(c)]</i>	<p>! Potential applicant files with TNRCC a notice of intent to file an application (see 335.392), indicating the proposed location and type of HWM facility;</p> <p>! the filing of the notice with TNRCC initiates the pre-application review process;</p> <p>! the date of filing shall be the date the notice is received by the commission.</p>

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Copy of Notice Submitted to Key Officials	PPA	335.391(c)(1) <i>[361.063(c)]</i>	At the same time, potential applicant will send copy of notice by certified mail, return receipt requested, to: <ul style="list-style-type: none"> - the county judge of the affected county location; - the mayor(s) of the affected municipality(ies); and - the appropriate regional council of government (COG).
Notice sent to state senators and representatives of proposed facility location	PPA	<i>[361.0641]</i>	TNRCC shall, as appropriate, send the notice of intent to the state senator and representative who represent the area in which the facility will be located.
Composition of Local Review Committee	PPA	335.391(c)(3)(A)	Local review committee shall consist optimally of 12 individuals; by mutual agreement between the applicant and the persons appointing the committees, a larger or smaller committee may be appointed. However, the committee shall maintain one to one ratio of regional appointments to local appointments.
Local Appointments for Incorporated Cities	PPA	335.391(c)(3)(B)(i)	If a proposed facility is to be located within the corporate limits or extraterritorial jurisdiction of city or town, the potential applicant shall ask the mayor to make all local appointments.
Local Appointments for Locations Within 5 miles of City Limits	PPA	335.391(c)(3)(B)(ii)	If a facility is to be located in an unincorporated area of a county, but within 5 miles of limits of any city, the potential applicant shall ask the mayor of each affected city to appoint a member; the appropriate county judge shall appoint at least one member who lives within 5 miles of proposed site, plus as many other individuals from the county as are necessary to complete local appointments.
Local Appointments for Location of at least 5 miles outside of Incorporated City	PPA	335.391(c)(3)(B)(iii)	If the facility would not be within 5 miles of the corporate limits or extraterritorial jurisdiction of a city, the potential applicant shall ask the appropriate county judge to appoint at least one member who lives within 5 miles of proposed site, plus as many other individuals from the county as are necessary to complete local appointments.

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Appointments by Regional Council of Government	PPA	335.391(c)(3)(B)(iv)	<p>The appropriate regional council of government (COG) makes the regional appointments; COG shall make an attempt to make appointments from as many of the following interest groups as possible:</p> <ul style="list-style-type: none"> - organized environmental or public interest groups, - citizen organizations, - industry, - academic community, - community or land use planning groups, - business groups, and - public health professionals. <p><i>(Note: It is not clear in the Texas regulations if the potential applicant <u>must ask</u> COG before the appointments are made, or if the COG is required to make the appointment once it receives the Notice of Intent to File an Application from the potential applicant; given the provisions at 335.391(c)(3)(B)(i)-(iii), likely the potential applicant must ask the COG to make the appointments.)</i></p>
Other Local Committee Selection Criteria	PPA	335.391(c)(3)(B)(vi)-(viii)	<p>Every effort should be made to appoint individuals who are:</p> <ul style="list-style-type: none"> - open-minded, - willing to participate in good faith, - able to devote adequate time to participation, and - respected in the community or region. <p>Appointees shall not be:</p> <ul style="list-style-type: none"> - employees or agents of the potential applicant. <p>An individual shall not serve on more than one local review committee any one time.</p>
45-day deadline for appointment of Local Review Committee	PPA	<i>[361.063(d)]</i>	The Local Review Committee shall be appointed not later than the 45th day after the notice of intent is filed with TNRCC.

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Failure to Make Appointments Within 45 days	PPA	335.391(c)(3)(B)(v)	If any local official or regional entity fails to make any appointments within 45 days after TNRCC receives the notice of intent to file, then the committee will be abolished.
21-day deadline for Initial Meeting of the Local Review Committee	PPA	335.391(c)(4) <i>[361.063(e)]</i>	The Local Review Committee shall meet within 21 days after all regional and local appointments have been made. (The TNRCC regulations conflict; it states in, 361.063(e) that the Local Review Committee shall meet not later than 21 days after the notice of intent is filed)
Maximum of 180 days for pre- application review process	PPA	335.391(c)(5) <i>[361.063(e)]</i>	The pre-application review process shall continue for a maximum of 180 days , unless it is shortened or lengthened by mutual agreement between the potential applicant and the Local Review Committee. (Conflicting information exists between the State statute (335.391(c)(5) and the TNRCC regulations (361.063(e). TNRCC regulations indicated that the review must continue for 90 days, not a maximum of 180)
Provision of resources to Local Review Committee	PPA	335.391(c)(6)	The potential applicant shall provide resources to fund the facilitator and other expenses, which may be necessary to aid the committee in its work; individuals who serve on the committee shall serve without compensation.
Preparation of Local Review Report	PPA	335.391(a)(2) 335.391(c)(3)(B)(ix) 335.391(d)(1)&(2) <i>[361.063(i)(2)]</i>	The chairperson of the Local Review Committee is responsible for the preparation of a report. The report shall include a description of the Local Review Committee's work and a summary of the committee's findings, including resolved and unresolved issues and unanswered questions.
Submission of Local review Report	PPA	335.391(d)(1) <i>[361.063(j)]</i>	Applicant shall submit, with the permit application, the report produced by the Local Review Committee.
Use of Local Review Report	PA	335.391(d)(1)	! The executive director of TNRCC shall consider the report in any decision to recommend granting or denial of the permit application. ! Also, the report may be offered by any party at a hearing and admitted into evidence subject to applicable rules of evidence.

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Interaction between applicant and Local Review Committee during permit review	PA	335.391(a)(1) <i>[361.063(i)(1)]</i>	If necessary , the Local Review Committee shall interact with the applicant during the technical review stage of the permitting process, to raise and attempt to resolve both technical and nontechnical issues of concern.
OTHER AGENCY AND GOVERNMENTAL ENTITY INVOLVEMENT			
Petition by Local Government for Rule on HW Facility in Unsuitable Area		<i>[361.105]</i>	Local governments may petition TNRCC for a rule that restricts or prohibits the siting of a new HW disposal facility or other new HWM facility in an area, including an area meeting one or more of the characteristics listed at <i>361.103</i> .
Review by Other Governmental Entities	PA	<i>[361.067]</i>	<p>TNRCC shall mail a copy of the administratively complete permit application or a summary of its contents to:</p> <ul style="list-style-type: none"> - the mayor of the affected <u>municipality</u>, - the health authority of the affected <u>municipality</u>, - the county judge of the affected <u>county</u>, - the health authority of the affected <u>county</u>, <p>The governmental entity to whom the application is mailed shall have a reasonable time to present comments and recommendations before TNRCC acts on the application.</p>
COMPATIBILITY OF FACILITY SITE WITH LOCAL SOLID WASTE MANAGEMENT PLANS			
Compatibility of the solid waste facility and the proposed site with the county's approved local SWMP	PA	<i>[361.062(a)]</i>	If a county has an approved solid waste management plan (SWMP), TNRCC must consider whether the solid waste facility and the proposed site for the facility are compatible with the county's approved local SWMP.

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IMPACT OF FACILITY ON LOCAL LAND USE			
Assessment of Impact on local land use	PA	<i>[361.0871(b)]</i> 335.180 intro 335.180(1)(D)	For a new hazardous waste management facility permit application, TNRCC shall assess the impact of the proposed facility on local land use in the area, including relevant land use plans. TNRCC shall assess the compatibility of the application with any land use plan adopted pursuant to the Texas Local Govt. Code, Chapter 211, or with local planning, zoning, or land use laws and ordinances in existence before publication of the notice of intent to file a solid waste permit application or, if no notice of intent is filed, at the time the permit application is filed.
Location of industrial and other waste-generating facilities and risk of transportation	PA	335.180(1)(A)-(C) <i>[361.0871(b)]</i>	In determining whether a new HWM facility is compatible with local land use, for a new hazardous waste management facility permit application, TNRCC shall consider: <ul style="list-style-type: none"> - the location of industrial and other waste-generating facilities in the area, - the amount of HW generated by industrial and other waste-generating facilities in the area, and - the risks associated with the transportation of HW to the facility.
Risk of fires and explosions; distance from existing structures and high-hazard areas	PA	335.180(2)(A)-(C) <i>[361.103(6)]</i>	In determining whether a new HWM facility is compatible with local land use, TNRCC may also consider: <ul style="list-style-type: none"> - the risk of fires or explosions from improper storage and disposal methods, - the distance from the site boundary to existing structures, and - the location of the facility in relation to high-hazard areas such as 100-year hurricane flood zones.
Denial of permit application if not compatible with local land use	PA	335.180(3) <i>[361.0871(b)]</i>	Based on its assessment of the application with respect to local land use, the TNRCC may deny an application or impose permit conditions deemed necessary to minimize or mitigate detrimental impacts on local land use.

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PUBLIC PARTICIPATION			
The federal regulations regarding the public participation process for the permitting of hazardous waste (RCRA) facilities can be viewed at http://earth1.epa.gov/epacfr40/chapt-I.info/subch-D/40P0124.pdf within the Part 124 Procedures for Decisionmaking. (State regulations cannot be less stringent than the federal counterparts.)			
NOTIFICATION			
Content of public notice	PA PDP	39.11	<p>When notice by publication or by mail is required by this chapter, the text of the notice must include:</p> <ul style="list-style-type: none"> - the name and address of the agency; - the name and address of the applicant and, if different, the location of the facility or activity to be regulated by the permit; - a brief description of the business conducted at the facility or activity described in the application or the draft permit; - the name, address, and telephone number of an agency contact person from whom interested persons may obtain further information; - a brief description of public comment procedures, and the time and place of any public meeting or public hearing; - a statement of procedures by which the public may participate in the final permit decision and, if applicable, how to request a hearing, or a statement that later notice will describe procedures for public participation; - for notices of public meetings or hearings, the date, time, and place of the meeting or hearing, and a brief description of the nature and purpose of the meeting or hearing, including the applicable rules and procedures; - the application or permit number; - if the applicant is subject to final approval by the executive director under Chapter 50 of this title (relating to Action on Applications), a statement that the executive director may issue final approval of the application unless there is a (if applicable) request for hearing filed with the chief clerk;

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Content of public notice (continued)			<ul style="list-style-type: none"> - if applicable, the deadline to file comments and if applicable, hearing requests; - a statement of whether the executive director has prepared a draft permit; - if applicable, a statement that the application or requested action is subject to the Coastal Management Program goals, policies; and - for radioactive material licenses under Chapter 336 of this title (relating to the Radioactive Substance Rules), if applicable, a statement that a written environmental analysis on the application has been prepared by the executive director, is available to the public for review, and that written comments may be submitted.
Content of notice of a hearing before the commission on a hearing request	PDP	39.11 39.21 39.23	<p>If a hearing request on an application is set for consideration during a commission meeting, the chief clerk shall mail notice to the applicant, executive director, public interest council, and the persons making the request no later than 30 days before the first meeting at which the commission considers the hearing request.</p> <p>The text of required notice shall follow the requirements of §39.11 (see above)</p>

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Notification by Publication	PA PDP	39.5(d), (f), and (g) 39.103(d)-(f)	<p>Public notice requirements apply to all actions except those specified in 39.15 and 39.17.</p> <p>If the applicant is required to publish notice, the applicant must file an affidavit with the chief clerk certifying facts that constitute compliance with the requirement. The deadline to file the affidavit varies with the type of notice required.</p> <p>Notification by publication shall be in a newspaper of the largest general circulation that is published in the county in which the facility is located or proposed to be located. If a newspaper is not published in the county, the notice must be published in a newspaper of general circulation in the county in which the facility is located or proposed to be located.</p> <p>If applicable, notices of draft permit must be published in each county and area which is adjacent or contiguous to each county in which the proposed facility is located, and specify a deadline which shall not be less than 45 days after newspaper publication to file public comment or hearing requests.</p> <p>If applicable, notices of a public meeting and notices of a contested case hearing shall be published once each week during the three weeks preceding a public meeting. The published notice shall not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches.</p> <p>If the application concerns a hazardous waste facility, the contested case hearing must include one session held in the county in which the facility is located. The text of the notice shall include the statement that at least one session of the hearing will be held in the county in which the facility is located.</p>
Cost for publication of notice	PA PDP	39.101(b)	The applicant is responsible for the cost of publication of notice.

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Failure of applicant to publish notice	PA PDP	39.5(a)	If the applicant does not cause the notice to be published within 30 days of receipt from TNRCC, TNRCC may cause the notice to be published and the applicant must reimburse TNRCC for the cost of publication within 30 days of publication.
Notification by Mail (TNRCC)	PA PDP	39.13 39.103(b), (d-f) 39.5(c) 39.7 Texas Water Code 5.115(c) 39.251(c)	<p>Notification by mail is required for notices of receipt of:</p> <ul style="list-style-type: none"> - receipt of application - intent to obtain a permit - draft permit - public meeting - contested case hearing - administratively complete application <p>If notification by mail is required, TNRCC will transmit the notice to the persons listed below:</p> <p><i>Note: The applicant is required to also mail certain notices; see comment below.</i></p> <ul style="list-style-type: none"> - State Senator and Representative who represents the area in which the facility is located or will be located, - affected landowners, - mayor and health authorities of the city/town in which the facility will be located, - county judge and health authorities of the county in which the facility will be located, - Texas Department of Health, - Texas Parks and Wildlife Department, - Texas Railroad Commission, - the applicant and persons on the facility mailing list, - state and federal agencies, as required by 40 CFR 124.10(c), - persons who filed public comment or hearing requests, - the Water Well Drillers Advisory Council, if application concerns injection well, - designee of the Executive Director or Chief Clerk if one is elected, and - if applicable, the secretary of the Coastal Coordination Council <p>The date of mailing for a notice of public hearing shall be no more than 45 or less than 30 days before the date set for hearing.</p>

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Notification by Mail (TNRCC) (continued)			<p>Note: Additional circumstances when additional persons must be given notice.</p> <ol style="list-style-type: none"> 1. For notice on an administratively complete application for an injection well permit, the school land board and persons owning minerals within the cone of influence should be included. 2. For notice of a contested case hearing, persons owning minerals within the cone of influence should be included.
Notification by Mail for a hearing for new SWM facilities (Applicant)	PDP	39.103(f)(3)	<p>TNRCC shall require the applicant to mail a notice of a contested case hearing concerning application for a solid waste facility to:</p> <ul style="list-style-type: none"> - each residential or business address located within one-half mile of the new solid waste management facility and - each owner of real property located within one-half mile of a new solid waste management facility listed in the real property appraisal records of the appraisal district in which the facility is sought to be permitted as of the date TNRCC deems the permit application is administratively complete. <p>The notice must be deposited with the U.S. postal service not more than 45 days or less than 30 days before the date of the hearing. The applicant must certify to TNRCC that the mailings were deposited.</p>
Cost for mailing of notice for hearing	PA PDP	39.101(e) 39.103(f)	The applicant is responsible for the cost of the notice.
Notification by broadcast	PDP	39.5(h) 39.103(d), (f)	<p>Notice of draft permits for hazardous waste facilities and contested case hearings are required to be broadcast.</p> <p>The applicant shall broadcast notice on one or more local radio stations that broadcast to an area that includes all of the county in which the facility is located. The Executive Director may require that the broadcast be made to an area that also includes the contiguous counties.</p>

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Notification regarding public meeting	PA	[361.082(d)] [361.0791(d)] 39.103(e) 39.11 39.5(g) 39.109(b)	<p>! The applicant shall give notice of the public meeting as provided by 361.0791; i.e., not less than once each week during the three weeks preceding a public meeting, the applicant shall publish notice of the meeting in the newspaper of the largest circulation that is published in the county in which the proposed facility is to be located, or if no newspaper is published in the county, in a newspaper of general circulation in the county.</p> <p>! The applicant shall provide TNRCC an affidavit certifying compliance. Acceptance of such an affidavit by TNRCC shall create a rebuttable presumption that the applicant has complied with the public meeting notice requirement.</p> <p>! The content of the notice is specified in 39.11 (refer to “Content of public notice”)</p>
Evidence of notice of hearing required for contested cases	PA	[361.083]	Evidence must be placed in the record to show that proper notice of the hearing was given to affected persons before the TNRCC may hear testimony in a contested case.
PUBLIC MEETING			
Public meeting required	PA	[361.0791] [361.081(c)] [361.082(d)] 39.103(e) 39.109(b)	TNRCC shall hold a public meeting on an application for a new HWM facility in the county in which the proposed HWM facility is to be located; the public meeting requirement also applies to an application for a Class 3 modification or a major amendment to an existing facility's HWM permit when requested by a person affected before the deadline to file public comment or hearing requests. A public meeting held as part of a local review process meets the requirement of a public meeting under §305.107 if notice is provided.

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CONTESTED CASE PUBLIC HEARINGS			
Public hearing regarding land use compatibility	PA	[361.069]	In processing a permit application, TNRCC may make a determination of land use compatibility. A public hearing may be held in accordance with <i>361.088</i> .
Persons who may request a public hearing	PA PDP	[361.082(b)] 55.21(a), (d), and (f) 55.27	<p>The following may request a contested case hearing:</p> <ul style="list-style-type: none"> - Commission - Executive Director, - the applicant, or by - affected persons when authorized by law. <p>For an application involving hazardous waste, a request for a contested case hearing must be submitted within 45 days after the last publication of the notice of draft permit. TNRCC may extend the time allowed for submitting a request for public hearing.</p>
Content of request for public hearing	PA PDP	55.21(c) 55.23	<p>The written request shall contain:</p> <ul style="list-style-type: none"> - a specific request for a contested case hearing - the name, mailing address, and phone number of the person making the request or, if it is a group or association, then add the name address, and phone number for the person responsible for receiving official documents, - a brief description of the interest of the person making the request, and - a brief description of how the application, if granted, would adversely affect such interest.
Public hearings for permit applications	PDP	[361.080] 39.103(f)	A contested case hearing on an application for a permit must include one session held in the county in which the facility is located; notice of a hearing shall be in accordance with <i>§361.0791</i> .

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Conditions under which TNRCC may take action without a public hearing	PDP	50.13 55.21(d)	<p>TNRCC may take an action on application at a regular meeting <u>without</u> holding a contested case hearing, provided that for applications involving <u>hazardous waste under the Texas SWDA, THSC, Chapter 361</u>:</p> <p>(1) at least 45 days prior to the regular meeting, notice of the application has been given by publication and by mail as required by law; and</p> <p>(2) within the 45-day period after the publication of the notice, no request for a public hearing has been made by the commissioner, executive director, or an affected person, or all timely hearing requests have been withdrawn or denied by the commissioner or a judge has remanded the application because of settlement.</p> <p>For Class 3 modifications, the time limit is 60 days.</p>
ADJUDICATORY HEARINGS			
No provisions found			

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Texas Hazardous Waste Facility Siting Provisions

Topic	Stage ¹	State citation ²	Provision
SITING RESTRICTIONS AND PROHIBITIONS			
Federal siting restrictions and prohibitions can be viewed at http://www.epa.gov/epacfr40/chapt-I.info/subch-I/ by selecting “Part 264 (Updated 1997) - Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities”. The regulatory requirements are in Location Standards at 264.18 in the document. (State regulations cannot be less stringent than the federal counterparts.)			
GENERAL			
Prohibition on Permit for Facility in Unsuitable Area	PPA PA	335.205(a)	TNRCC has the authority to prohibit the issuance of a permit for a new hazardous waste management facility or an areal expansion of an existing facility if the facility is to be located in an area determined to be unsuitable under §361.103 unless the design, construction, and operational features of the facility will prevent adverse effects from unsuitable site characteristics.
Active geological processes	PPA PA	[361.103(5)] 335.204(a)(7) 335.204(b)(8) 335.204(c)(7) 335.204(d)(7) 335.204(e)(9)	TNRCC must consider active geological processes (such as flooding, erosion, subsidence, submergence, and faulting) as a factor in determining that an area is unsuitable for a HWM facility; a storage or processing facility, land treatment facility, waste pile, storage surface impoundment or landfill may not be located in areas of active geologic processes unless design, construction and operational features of the facility will prevent adverse effects resulting from the geologic processes.
SOIL AND WATER			
Soil Conditions	PPA PA	[361.103(3)] 335.204(a)(5) 335.204(b)(5) 335.204(c)(5) 335.204(d)(5) 335.204(e)(5)	The following facilities may not be located in areas where soil units within five feet of the containment structure have a Unified Soil Classification of GW, GP, GM, GC, SW, SP, or SM, or a hydraulic conductivity greater than 10 ⁻⁵ cm/sec unless certain conditions are met: a storage or processing facility, land treatment facility, waste pile, storage surface impoundment or landfill.

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Texas Hazardous Waste Facility Siting Provisions

Topic	Stage ¹	State citation ²	Provision
Site selection to protect surface water or groundwater	PPA PA	335.203 <i>[361.097]</i> <i>[361.103(1), (2), (3), (5), (6)]</i>	TNRCC may not issue a permit for a new HWM facility or the areal expansion of an existing HWM facility , unless it finds that the proposed site reasonably minimizes possible contamination of surface water and groundwater. TNRCC shall consider the following factors in making the determination: (1) active geological processes, (2) groundwater conditions, (3) soil conditions, and (4) climatological conditions.
Location in recharge zone of sole-source aquifer prohibited	PPA PA	<i>[361.101]</i> 335.204(a)(3) 335.204(b)(3) 335.204(c)(3) 335.204(d)(3) 335.204(e)(3)	A land treatment facility, waste pile, storage surface impoundment, landfill, or areal expansion of such a facility may not be located on the recharge zone of a sole-source aquifer. A storage or processing facility may not be located in a recharge zone of a sole-source aquifer unless secondary containment is provided.
Protection of areas overlying regional aquifers	PPA PA	<i>[361.107]</i> 335.204(a)(4) 335.204(b)(4) 335.204(c)(4) 335.204(d)(4) 335.204(e)(4)	! TNRCC shall require an applicant for a new hazardous waste storage or processing facility, land treatment facility, waste pile, storage surface impoundment or landfill that is to be located in the apparent recharge zone of a regional aquifer to prepare and file a hydrogeologic report documenting the potential effects on the regional aquifer in the event of a release. ! A facility may not be located in areas overlying regional aquifers unless certain conditions are met. The conditions differ depending on the type of facility.

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Texas Hazardous Waste Facility Siting Provisions

Topic	Stage ¹	State citation ²	Provision
SEISMIC CONSIDERATIONS			
Prohibition on permit for facility affected by fault	PPA PA	<i>[361.1011]</i> 335.205(h)	<p>No permit shall be issued if a fault exists within 3,000 feet of a proposed hazardous waste management facility, or of a capacity expansion of an existing hazardous waste management facility, unless the applicant demonstrates (unless previously demonstrated) to TNRCC or to the U.S. EPA, that:</p> <ul style="list-style-type: none"> ! the fault has not had displacement within Holocene time or, if faults have had displacement within Holocene time, that no such faults pass within 200 feet of the portion of the surface facility where treatment, storage or disposal of hazardous waste will be conducted; and ! the fault will not result in structural instability of the surface facility or provide for groundwater movement to the extent that there is endangerment to human health or the environment.
A fault that has reasonably been shown to have displacement of shallow Quaternary sediments or of man-made structures	PPA PA	335.204(a)(9) 335.204(b)(12) 335.204(c)(11) 335.204(d)(11) 335.204(e)(13)	A storage or processing facility, land treatment facility, waste pile, storage surface impoundment or landfill may not be located within 30 feet of the upthrown side or 50 feet of the downthrown side of the actual or inferred surface expression of a fault that has reasonably been shown to have caused displacement of shallow Quaternary sediments or of man-made structures unless the design, construction, and operational features of the facility will prevent adverse effects resulting from fault movement.

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Texas Hazardous Waste Facility Siting Provisions

Topic	Stage ¹	State citation ²	Provision
FLOODING AND EROSION			
Flood hazards and floodplains	PPA PA	<i>[361.103(1)]</i>	TNRCC shall by rule consider the flood hazard of an area in determining whether an area is unsuitable for a HWM facility.
Special requirement for landfills located in 100-year floodplain	PPA PA	<i>[361.098(a)]</i> 335.204(e)(1)	A landfill may not be located in the 100-year floodplain existing before site development, unless the landfill is located in an area with a flood depth of less than 3 feet.
Requirements for other facilities located in 100-year floodplain	PPA PA	335.204(a)(1) 335.204(b)(1) 335.204(c)(1) 335.204(d)(1) 335.204(e)(1)(A) 335.204(e)(1)(B) 335.152(a)(1), adoption of 40 CFR 264.18(b) by reference	<p>The following facilities may not be located in a 100-year floodplain unless the applicant can demonstrate to the satisfaction of the commission that the facility design will prevent the physical transport of any HW by a 100-year flood event:</p> <ul style="list-style-type: none"> - new commercial hazardous waste facility land treatment units - areal expansion of a landfill - new commercial hazardous waste facility landfill units <p>The following facilities may not be located in a 100-year floodplain unless designed, constructed, operated, and maintained to prevent the physical transport of any HW by a 100-year flood event:</p> <ul style="list-style-type: none"> - waste piles - storage surface impoundments - storage or processing facilities - land treatment facilities
Location of landfill in a 100-year floodplain of a perennial stream	PPA PA	<i>[361.100]</i> 335.204(e)(7)	A landfill at which hazardous waste is received for a fee may not be located in a 100-year floodplain of a perennial stream, delineated on a flood map adopted by the Federal Emergency Management Agency after September 1, 1985, as zone A1-99, V0, or V1-30. This provision does not apply to any facility for which a notice to file an application, or an application, was filed with the commission as of September 1, 1985.

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Texas Hazardous Waste Facility Siting Provisions

Topic	Stage ¹	State citation ²	Provision
Coastal high hazard areas	PPA PA	<i>[361.103(6)]</i> 335.204(b)(9) 335.204(c)(8) 335.204(d)(8) 335.204(e)(10)	A land treatment facility, waste pile, storage surface impoundment or landfill may not be located within 1,000 feet of an area subject to active shoreline erosion if the proposed area is protected by a barrier island or peninsula unless the facility will prevent adverse effects resulting from storm surge and erosion or scouring by water. If the area is unprotected by a barrier island or peninsula, the distance limitation is 5,000 feet.
AIR			
Hazardous waste or solid waste management facilities required to obtain a permit are subject to air regulations	PPA PA	335.362(a) 335.362(c) 335.362(d) 335.362(e)	<p>! Facilities affected by the air regulations include all hazardous waste or solid waste management facilities that are required to obtain a permit; any person who plans to construct or modify a hazardous waste or solid waste management facility is required to obtain authorization for such construction or modification under Chapter 116 of Title 30.</p> <p>! The air quality permitting requirements do not apply to facilities in existence on or before September 1, 1987 (except for facility units that incinerate or burn hazardous waste) or to the expansion of HW land disposal facilities in existence on or before September 1, 1987.</p>
Effect of air contaminants or nuisance odor on individuals attending school facilities	PPA PA	116.111(1)	For permit applications for construction or modification of a facility within 3,000 feet of an elementary, junior high/middle, or senior high school, TNRCC shall consider any possible adverse short-term or long-term side effects that an air contaminant or nuisance odor from the facility may have on individuals attending the school facilities.

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Texas Hazardous Waste Facility Siting Provisions

Topic	Stage ¹	State citation ²	Provision
DISTANCE LIMITATIONS/BUFFER ZONES			
Setback distance from public residences and other structures for non-commercial facilities	PPA PA	<i>[361.102(a)]</i> 335.204(b)(6) 335.204(e)(6) 116.112(b)(1)	A new HW landfill or land treatment facility or areal expansion of such a facility may not be located within 1,000 feet of: <ul style="list-style-type: none"> - an established residence, - church, - school, - day care center, - surface water body used for a public drinking water supply, or - dedicated public park which is in use at the time the notice of intent to file a permit application is filed with TNRCC or, if no such notice is filed, at the time the permit application is filed with TNRCC.
Setback distance from public residences and other structures for commercial facilities	PPA PA	<i>[361.102(b)]</i> 335.205(c) 116.112(b)(2)	For commercial HWM facilities , the prohibition distance from an established residence, church, school, day care center, surface water body used for a public drinking water supply or dedicated public park is one-half mile (2,640 feet) .
Condition under which setback distance applies to a subsequent areal expansion of a new commercial HW facility	PPA PA	<i>[361.102(c)]</i> 335.205(d) 116.112(b)(3)	For a subsequent areal expansion of a new commercial hazardous waste management facility , the requirements at 335.205(c) and 116.112(b)(2) apply only if the established residence, church, school, day care center, surface water body used for a public drinking water supply or dedicated public park was in place at the time the distance was certified for the original permit.
Demonstration requirement for commercial facilities to be located at a distance greater than one-half mile from public residences and other structures	PPA PA	<i>[361.102(d)]</i> 335.205(e) 116.112(b)(4)	For a new commercial hazardous waste management unit that is proposed to be located at a distance greater than one-half mile (2,640 ft) from an established residence, church, school, day care center, surface water body used for a public drinking water supply or dedicated public part, no permit shall be issued unless the applicant demonstrates to the satisfaction of the commission that the facility will be operated so as to safeguard public health and welfare and protect physical property and the environment, at any distance beyond the facility's property boundaries.

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Texas Hazardous Waste Facility Siting Provisions

Topic	Stage ¹	State citation ²	Provision
Setback distance from lakes used to supply public drinking water through a public water system	PPA PA	[361.103(4)] 335.204(a)(6) 335.204(b)(7) 335.204(c)(6) 335.204(d)(6) 335.204(e)(8)	A storage or processing facility, land treatment facility, waste pile, storage surface impoundment or landfill may not be located in areas of direct drainage within one mile of a lake at its maximum conservation pool level, if the lake is used to supply public drinking water through a public water system, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from a release in such areas.
Setback distance in areas subject to active shoreline erosion	PPA PA	[361.103(6)] 335.204(b)(9) 335.204(c)(8) 335.204(d)(8) 335.204(e)(10)	A land treatment facility, waste pile, storage surface impoundment or landfill may not be located within 1,000 feet of an area subject to active shoreline erosion, if the proposed area is protected by a barrier island or peninsula unless the facility will prevent adverse effects resulting from storm surge and erosion or scouring by water. If the area is unprotected by a barrier island or peninsula, the distance limitation is 5,000 feet.
Setback distance in a fault which has had displacement in Holocene time	PPA PA	[361.1011] 335.152(a)(1), adoption of 40 CFR 264.18(a)	Portions of new facilities where treatment, storage, or disposal of hazardous waste will be conducted must not be located within 61 meters (200 feet) of a fault which has had displacement in Holocene time.
Setback distance in an area where a fault has reasonably been shown to have displacement of shallow Quaternary sediments or of man-made structures	PPA PA	335.204(a)(9) 335.204(b)(12) 335.204(c)(11) 335.204(d)(11) 335.204(e)(13)	A storage or processing facility, land treatment facility, waste pile, storage surface impoundment or landfill may not be located within 30 feet of the upthrown side or 50 feet of the downthrown side of the actual or inferred surface expression of a fault that has reasonably been shown to have caused displacement of shallow Quaternary sediments or of man-made structures unless the design, construction, and operational features of the facility will prevent adverse effects resulting from fault movement.
OTHER HUMAN HEALTH CONSIDERATIONS			
No provisions found			

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Texas Hazardous Waste Facility Siting Provisions

Topic	Stage ¹	State citation ²	Provision
ENVIRONMENTALLY SENSITIVE AREAS			
Critical habitats of endangered species	PPA PA	<i>361.103(7)</i> 335.204(a)(8) 335.204(b)(10) 335.204(c)(9) 335.204(d)(9) 335.204(e)(11)	TNRCC may consider the critical habitat of endangered species as a criteria in determining that an area is unsuitable for a HWM facility; a storage or processing facility, land treatment facility, waste pile, storage surface impoundment or landfill may not be located in the critical habitat of an endangered species unless the facility will prevent adverse effects on the critical habitat.
Location on wetlands prohibited	PPA PA	<i>[361.099]</i> 335.204(a)(2) 335.204(b)(2) 335.204(c)(2) 335.204(d)(2) 335.204(e)(2)	A HW management unit (storage or processing facility, land treatment facility, waste piles, storage surface impoundment and landfills), or an areal expansion of an existing HWM may not be located in wetlands.
Location on barrier island or peninsula prohibited	PPA PA	335.204(b)(11) 335.204(c)(10) 335.204(d)(10) 335.204(e)(12)	A land treatment facility, waste pile, storage surface impoundment or landfill may not be located on a barrier island or peninsula.
OTHER RESTRICTIONS			
Salt domes or sulphur mines	PPA PA	335.152(a)(1), adoption of 40 CFR 264.18(c)	The placement of any noncontainerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine or cave is prohibited.

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ENVIRONMENTAL JUSTICE CONSIDERATIONS			
No provisions found			
ECONOMIC CRITERIA			
Economic and other practical criteria	PPA PA	<i>[361.106]</i> 335.205(b)	A new hazardous waste landfill or areal expansion of an existing HW landfill will not be permitted if there is a practical, economic, and feasible alternative to the landfill that is reasonably available to manage the types and classes of hazardous waste that might be disposed of at the landfill.
OTHER CRITERIA			
No other provisions found			

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